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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,494	08/29/2001	Mitsuru Senoo	A34630	6246

21003 7590 03/28/2006

BAKER & BOTTS
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER	
PROCTOR, JASON SCOTT	
ART UNIT	**PAPER NUMBER**
2123	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/941,494	Applicant(s) SENOO ET AL.	
	Examiner Jason Proctor	Art Unit 2123	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 9-14.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Paul L. Rodriguez
Primary Examiner
Art Unit 2125 3/23/06

REQUEST FOR RECONSIDERATION

Applicants' arguments are unpersuasive for the following reasons.

Applicants argue that:

> On the other hand, the method disclosed in the pending application is used to determine the *optimum* consumption flow rate, which is quite different from merely determining a consumption flow rate given a set of parameters. [...] More specifically, the method of the pending application consists of additional steps in which the consumption flow rate corresponding to the present configuration of the device is iteratively compared against the consumption flow rates of different configurations of the device until an optimum consumption flow rate is achieved.

Patentability depends upon the *claimed invention* rather than, for example, the method *disclosed* in the pending application.

Further, Applicants interpretation of the claimed invention as a method in which flow rates are "iteratively compared against the consumption flow rates of different configurations" is noted. In the context of the prior art, this argument alleges that it is novel or non-obvious to perform a well-known computation of a consumption flow rate, determine that the consumption flow rate is undesirable, change the computation parameters, and repeat the step of computation. The Examiner finds this argument unpersuasive. The claimed invention is obvious in light of the references as applied, and further in light of concepts such as "incremental development" and "iterative test," which are described in technical dictionaries and engineering texts from various disciplines.

incremental development A software development technique in which requirements definition, design, implementation, and testing occur in an overlapping, iterative (rather than sequential) manner, resulting in incremental completion of the overall software product (IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition)

iterative (test, measurement, and diagnostic equipment) Describing a procedure or process which repeatedly executes a series of operations until some condition is satisfied. An iterative procedure may be implemented by a loop in a routine. (IEEE 100 The Authoritative Dictionary of IEEE Standards Terms, Seventh Edition)

Applicants further argue that:

> To summarize more generally, the invention is not, as the Examiner alleges, directed solely to automating the manual process for determining a flow rate based on a set of inputs. Rather, one aspect of the invention is directed to the further manipulation of the outputs of the flow rate formulas resulting in the determination of an optimum flow rate. This determination of an optimum flow rate is what makes this method non-obvious to one skilled in the art.

Applicants argument rephrases the allegation that the invention is "automating the manual process for determining a flow rate based on a set of inputs." The claims explicitly recite steps wherein an operator provides the inputs to be calculated by a computer. Applicants allegation that the iterative determination of an optimum flow rate is novel or non-obvious is unpersuasive in light of the references as applied and in light of the dictionary definitions cited above.